

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award and Award Nunc Pro Tunc entered by the Administrative Law Judge should be affirmed.

While delivering pizza for the respondent on March 12, 1989, claimant was savagely attacked and stabbed nine times. Claimant sustained knife wounds to his legs, both knees, back, elbow, and a kidney. In addition to his physical injuries, claimant contends he has sustained psychological injury or aggravation of a mental illness which now prevents him from engaging in any substantial or gainful employment and is, therefore, permanently and totally disabled under K.S.A. 1988 Supp. 44-510c. The Appeals Board agrees.

Claimant presented the testimony of board eligible psychiatrist J. Luis Ibarra, M.D. Dr. Ibarra began treating claimant in 1979 for schizophrenia, a mental illness. Dr. Ibarra described how claimant's psychiatric condition worsened after the March 12, 1989, attack. Dr. Ibarra believes the attack both aggravated claimant's preexisting mental illness and produced post-traumatic stress disorder. The doctor reported that for the first month or two after the attack claimant coped very well. However, shortly thereafter claimant's condition deteriorated. Claimant became more depressed, quite disorganized in his thinking, more withdrawn and unable to concentrate or focus upon activities, and fearful of people. During the period that Dr. Ibarra noticed claimant's gradual deterioration, claimant's parents reported to the doctor that claimant was spending most of his time in the basement and garage talking to himself and screaming. Dr. Ibarra testified that claimant's deteriorated mental condition is related to the March 1989 attack and, also, that claimant is unable to work due to his worsened mental state. Despite the preexisting mental illness, before the March 1989 knife attack claimant possessed the ability to work.

The Appeals Board agrees with the Administrative Law Judge and finds Dr. Ibarra's opinions persuasive regarding claimant's worsened mental condition. The Appeals Board is mindful of the contrary opinions expressed by board-certified psychiatrists Neil E. Roach, M.D., and George Dyck, M.D., but, in this instance, finds Dr. Ibarra to be in a better position to identify and gauge the change in claimant's mental condition as a direct result of the attack because Dr. Ibarra treated claimant both immediately before and immediately after that incident.

The Appeals Board agrees with and adopts the Administrative Law Judge's conclusion that claimant is permanently and totally disabled as a direct result of the savage attack. Again, this conclusion is supported by Dr. Ibarra's testimony.

The respondent cited Rund v. Cessna Aircraft Co., 213 Kan. 812, 518 P.2d 518 (1974), for the proposition that an aggravation of a preexisting mental illness is not compensable under the Workers Compensation Act. The Appeals Board finds that the dicta contained in the Rund decision regarding aggravation of a preexisting mental condition does not prevent claimant from receiving benefits for psychological injury in this proceeding. First, claimant sustained both post-traumatic stress disorder and an aggravation of a preexisting mental illness. Although Rund could be construed as limiting benefits it refers only to aggravation of a preexisting mental illness. Second, Rund does not bar benefits for aggravation of a preexisting mental illness when it is shown that the

aggravation is directly traceable to the accidental injury. That is what occurred in this proceeding.

Kansas law is well settled that every natural consequence that flows from an injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary, initial injury. Berger v. Hahner, Foreman & Cale, Inc., 211 Kan. 541, 506 P.2d 1175 (1973), following Jackson v. Stevens Well Service, 208 Kan. 637, Syl. ¶ 1, 493 P.2d 264; Adamson v. Davis Moore Datsun, Inc., 19 Kan. App. 2d 301, 312, 868 P.2d 546 (1994).

It is also firmly established that traumatic neurosis, following physical injury and shown to be directly traceable to the injury, is compensable under the Workers Compensation Act. Berger. This is so even though financial, marital, or other worries may have contributed to the neurosis. Barr v. Builders, Inc., 179 Kan. 617, Syl. ¶ 4, 296 P.2d 1106 (1956), Adamson, at 308.

To establish a compensable claim for traumatic neurosis, the claimant must show: (1) a work-related injury, (2) symptoms of the traumatic neurosis, and (3) that the neurosis is directly traceable to the physical injury. Love v. McDonald's Restaurant, 13 Kan. App. 2d 397, Syl. ¶, 771 P.2d 557, rev. denied 245 Kan. 784 (1989).

There is no distinction between physical and psychological injuries for the purpose of determining whether a worker's disability from an injury is compensable. Reese v. Gas Engineering & Construction Co., 216 Kan. 542, Syl. ¶ 1, 532 P.2d 1144 (1975). Functional impairment may be either physical or psychological. Adamson, at 312.

Although the above cases generally refer to traumatic neurosis and related maladies, there is no reason to differentiate the impairment and disability caused by traumatic neurosis from the impairment and disability caused by the aggravation of a pre-existing mental illness when that aggravation is directly traceable to physical injury caused by a work-related accident. Even if claimant had failed to prove post-traumatic stress disorder, the Appeals Board finds claimant would still be entitled to benefits under the Workers Compensation Act for the aggravation of the schizophrenia which also renders claimant unable to engage in substantial and gainful employment. Therefore, claimant has met his burden of proving entitlement to an award of permanent total disability.

The Appeals Board adopts the findings and conclusions of the Administrative Law Judge as set forth in the Award to the extent they are not inconsistent with the findings made above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award and Award Nunc Pro Tunc entered by Administrative Law Judge John D. Clark dated April 15, 1996, and April 16, 1996, respectively, should be, and hereby are, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael T. Harris, Wichita, KS
William P. Tretbar, Wichita, KS
Steven L. Foulston, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director